

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of the Proposed
Activation of the Minnesota Joint
Underwriting Association and the
Market Assistance Plan to Insure
Specified Classes of Business
(JUA V).

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson on April 28 and 29, 1987, in Courtroom 12, Third Floor, Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota. The hearing record in this matter closed on April 29, 1987 at the conclusion of the hearing.

Representatives from the following classes of business appeared and testified at the hearing:

1. Special Event Coverage - Leo Frank and Tony Armbrust, on behalf of Sobieski Days, Route 3, Little Falls, Minnesota 56345.
2. Canoe Outfitters - Dale Holtegaard, on behalf of Root River Canoe Association, 210 Burr Oak Street, Chatfield, Minnesota 55923.
3. County Park Districts - Gregg Mack, on behalf of the Suburban Hennepin Regional Park District, 12615 County Road 9, P.O. Box 41320, Plymouth, Minnesota 55441.

John C. Bjork, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Department of Commerce but did not participate during the hearing on this matter.

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after review of the record which may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained in this Report. Minn. Stat. 62I.22, subd. 3 (1986) provides that the hearing in this case and all matters after the hearing are a contested case under Minn. Stat. ch. 14. Chapter 14 provides that an opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Minn. Stat. 62I.22, subd. 4 (1986) provides that the Commissioner shall make a decision in this case within ten (10) days of receipt of the Administrative Law Judge's Report.

Written exceptions and argument may be presented to the Commissioner of Commerce, Michael A. Hatch, Minnesota Department of Commerce, Fifth Floor, Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101, within seven (7) days of the issuance of this Report.

STATEMENT OF ISSUES

The issues to be determined in this contested case proceeding are whether activation by the Commissioner of Commerce of the Market Assistance Plan (MAP) and the Joint Underwriting Association (JUA) for the class members appearing at the hearing is necessary beyond the 180-day original activation period. It must be determined whether the class members have shown that they were (1) unable to obtain insurance through ordinary means and (2) that the insurance sought is either (a) required by statute, ordinance or other law, or (b) is necessary to earn a livelihood or conduct a business and serves a public purpose.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Matters

1. Notices of Activation to Insure Specified Classes of Business and Public Hearing were published in the State Register by the Commissioner of Commerce on February 16, March 2 and 23, 1987 (11 S.R. 1464, 1557, and 1744, respectively). In conjunction with these publications, notices and letters informing applicants about the statutory hearing process were mailed to all persons who had applied for coverage under the Joint Underwriting Association to the specified classes of business.

2. A Prehearing Conference in this matter was held on April 14, 1987 at 1:30 p.m. at the Office of Administrative Hearings. On April 16, 1987, a Prehearing Order was issued to all known parties, setting a partial hearing schedule and advising parties of documents and information to be brought to the hearing.

3. Several classes of business listed in the Notices of Public Hearing on Permanent Activation failed to have any member appear at the hearing in this matter and, therefore, cannot be considered in this proceeding. They are: fuel delivery service; provider of emergency/temporary community services; concrete and excavation contractor; BMX bicycle track; roofing and sheet metal contractor; chemical and fiberglass wholesaler; horse breeding, training and showing; escrow agents; foam insulation contractors; religiously-affiliated nursing homes; amusement parks; and mosquito control district.

Special Event Coverage

4. Leo Frank is the President of Sobieski Days, a non-profit charitable organization which sponsors Little League Baseball, a sportsmen's club, playground activities, and an annual event in the city of Sobieski, Polish Days. Sobieski is a city of approximately 150 people in Morrison County. Polish Days has been an annual event for 13 years and is one of the largest

public gatherings in Morrison County. In 1983 and 1984, the city of Sobieski secured a general liability policy for the Polish Days celebration, which is the last Sunday in June, on behalf of the sponsor, Sobieski Days. In 1985, Sobieski Days secured their own general liability policy and paid a premium of

\$500. (Exhibit 1.) In 1986, Sobieski Days was unable to obtain a general liability policy and consequently, Polish Days was cancelled. In April of 1987, the city of Sobieski informed Sobieski Days that it had to have a general liability policy in order to sponsor Polish Days. (Exhibit 1.) Sobieski Days subsequently tried to obtain coverage for the single-day event from three different agencies, without success. Presently, Sobieski Days has no general liability policy for Polish Days, which is scheduled to occur on June 28, 1987. If a liability policy cannot be obtained, Sobieski Days will be forced to again cancel Polish Days. All the proceeds from the Polish Days event goes to sponsor amateur baseball and playground activities.

Canoe Outfitters

5. Dale R. Holtegaard is the sole owner of Root River Canoe Association, an incorporated business, which is a full-service canoe outfitter in Chatfield, Minnesota. The Association rents canoes and all the camping equipment and accessory items necessary for canoe trips. In addition, the Association shuttles canoe rental customers back and forth within a range of approximately 50 miles for daily canoe rental. The Association has a canoe awareness program for the purpose of informing the public as to the proper and safe techniques of canoeing and camping. There are 98 miles of local water which the Association uses for purposes of its business activities. The main thrust of the Root River Canoe Association is to furnish a therapy-type experience for youth, either as part of a rehabilitation program or as a preventative for incorrigible behavior, in a small rural community.

6. In order to conduct its canoe business, Root River Canoe Association needs liability coverage in the following areas: (a) on-water liability; (b) camping liability; (c) guiding liability; (d) professional instructional liability; and (e) shuttle service (motor vehicle transportation) liability. To date, the Association has only been able to obtain coverage for on-water liability. (Exhibit 2.) That coverage was obtained by a binder dated April 14, 1987. The policy has not arrived as yet, however. (Exhibit 4.) The Association has contacted over 20 local insurance agencies and placed many phone calls outstate in an attempt to obtain the four liability coverages which it does not have. (Exhibit 3.) It did receive a six-month premium quote of \$1,506 for shuttle-service liability coverage. However, because the Association's gross receipts per year are only approximately \$2,800 at present, that proposed quote was not acceptable. It has received no quotes on any of the other liability coverages.

7. Because of its failure to have the four types of liability insurance coverage listed above, Root River Canoe Association cannot solicit or respond to requests for services from public bodies, church groups, civic groups, scout groups, or other types of youth groups because all require that the

Association have a complete package of liability coverage. During the last year, the Association lost approximately \$500 because of its inability to solicit and sell its services. Mr. Holtegaard has other employment, however, the Canoe Association is run as a business and Holtegaard intends to make a profit through its operation. At present, a local bank has made loans to the Association to keep it in operation but has stated that "successful" operation is contingent upon having the necessary liability insurance coverage package.

County Park Districts

8. The Suburban Hennepin Regional Park District is a special Park District created pursuant to Minn. Stat. ch. 398. Pursuant to Minn. Stat.

398.08, the Park District has all the rights, powers, privileges and immunities of a municipal corporation, and is also subject to the duties of a municipal corporation. Seven elected Commissioners, each from a different geographical region, make up the Park District Board which is the administrative agency of the Park District. The special Park District is 36 years old and "controls" approximately 24,000 acres in the metro area. Nineteen separate park units are included in the District, most of which have connecting corridors for inter-park activities.

9. The major purpose of the special Park District is to provide outdoor recreational opportunities for the public. These include: picnicking, swimming, boating, downhill and cross-country skiing, nature centers, play areas, running paths, and the area for outdoor leisure activities. The District serves approximately two and one-half million people annually, with a budget of nine and one-half million dollars. Approximately six and one-half million dollars of the budget comes from local property taxes and three million comes from fees and grants. The District owns and operates two golf courses, one downhill ski area, and leases one ski jump to the Minneapolis Ski Club.

10. The Suburban Hennepin Regional Park District is covered by the tort liability provisions of Minn. Stat. ch. 466.

11. The District had a general liability insurance policy issued by the Jefferson Insurance Company which expired on January 1, 1986. Jefferson refused to renew the policy at that time. Since that date, the Park District has not had a general liability policy with the exception of a limited liability policy covering only "normal" ski activities at the downhill ski area. The Park District, through insurance agent Jack Dysti and an employee, William Husbands, employed specifically for the purpose of coordinating efforts to find insurance, have been unable to obtain a general liability policy in any of the conventional, excess, or foreign insurance markets. (Exhibit 5.)

12. Because of the lack of a general liability insurance policy, the Park District has restricted many of its programs and activities offered to the

public due to the damage exposure to the taxpaying public. In addition, members of the Board of Commissioners may be personally liable because of their failure to insure the Park District. Groups who would normally use the Park District lands for outdoor activities have been unable to do so because the District does not have general liability coverage. (Exhibit 5.)

13. In November of 1985, prior to the nonrenewal of the Jefferson Insurance Company policy, a "tentative" offer for general liability coverage was made to the District by the General Star Insurance Company. This "offer" was not a firm quote but merely an invitation to begin to talk. The numbers stated by General Star at that time were a liability policy with an aggregate limit of \$500,000, with a \$25,000 per occurrence deductible, for a premium of \$150,000 per year. At that time, because of the high premium, high deductible, and aggregate coverage limitation, the Park District declined to negotiate any further with General Star. (Exhibit 5.)

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:.

CONCLUSIONS

1. The Commissioner of Commerce and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. 62I.21 and 62I.22 (1986).

2. The Department of Commerce has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Department of Commerce has given proper notice of the hearing in this matter.

4. The Commissioner of Commerce is authorized by Minn. Stat. 62I.21 (1986) to activate the Market Assistance Plan and the Joint Underwriting Association "to provide assistance with respect to the placement of general liability insurance coverage on Minnesota risks for a class of business

5. The JUA may be activated by the Commissioner only for the placement of general liability insurance as provided in Minn. Stat. 62I.21 (1986) and the coverage sought by each class of business appearing in this proceeding is within the line of general liability insurance.

6. The burden of proof in this proceeding is upon each class of business seeking to continue the activation of the Market Assistance Plan and the Joint Underwriting Association on its behalf beyond the initial 180-day period.

7. The Joint Underwriting Association is authorized to provide insurance coverage to any person or entity unable to obtain insurance through ordinary means if the insurance is required by statute, ordinance or otherwise required by law, or is necessary to earn a livelihood or conduct a business and serves a public purpose. Prudent business practice or mere desire to have insurance coverage is not a sufficient standard for the Association to offer insurance coverage to a person or entity. Minn. Stat. 62I.02, subd. 1 (1986).

8. The following classes of business made no appearance at the hearing in this matter and, therefore, are in default in this case and have not sustained their burden of proof to show that it is necessary to continue the activation of the Market Assistance Plan and the Joint Underwriting Association for them beyond the 180-period: fuel delivery service; provider

of emergency/temporary community services; concrete and excavation contractor;
BMX bicycle track; roofing and sheet metal contractor; chemical and fiberglass
wholesaler; horse breeding, training and showing; escrow agents; foam
insulation contractors; religiously-affiliated nursing homes; amusement
parks;
and mosquito control district.

9. Each class of business appearing at the hearing proved that its obtaining general liability insurance or professional liability insurance would serve a public purpose.

10. The following classes of business have sustained their burden of proof and made the showing required in Conclusion No. 7: special event coverage for community celebrations; canoe outfitters; and county park districts.

11. The questions of (1) whether the activities of certain persons or entities present a risk so great that they should not be offered insurance coverage, (2) whether coverage requested is for environmental impairment liability or product liability insurance, or (3) whether the activities to be covered are conducted substantially outside the State of Minnesota, as described in Minn. Stat. 621.02, subd. 1 (1986), are questions within the jurisdiction of the Minnesota Joint Underwriting Association rather than the Commissioner of Commerce in this contested case proceeding and have not been considered herein.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

It is respectfully recommended that the Commissioner of Commerce continue the activation of the Market Assistance Plan and the Joint Underwriting Association for the following classes of business: special event coverage for community celebrations; canoe outfitters; and county park districts.

Dated this 30 day of April, 1987.

PETER C. ERICKSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped. Tape Numbers 5193 and 5210.

MEMORANDUM

The ultimate issue in this case is whether or not the classes of business who appeared at the hearing in this matter have established the "necessity" to activate the Minnesota Joint Underwriting Association (JUA) past 180 days. The standards by which that necessity is to be established are set out at Minn. Stat. 621.02, subd. 1 (1986). A person or entity must show that it is (1) unable to obtain insurance through ordinary methods, and (2) that the insurance is (a) either required by statute, ordinance or other law or is (b) necessary to earn a livelihood or conduct a business and serves a public purpose. As set forth in the Findings of Fact and Conclusions above, the Judge has determined that the record supports continuation of the JUA for the

applicants who appeared at the hearing. No significant legal issues were raised in this proceeding which must be addressed herein.

P.C.E.